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Methanex USA LLC
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Methanex Fortier, Inc., Member
Methanex USA LLC
c/o The Corporation Trust Company, Registered Agent
Corporation Trust Center, 1209 Orange St
Wilmington, DE 19801

Re: Notice of Intent to File Citizen Suit Under Section 505(b)(1) of the Federal Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. § 1365(b)

Dear Madame and Messieurs:

This letter is to give you notice that the Louisiana Environmental Action Network, Inc. ("LEAN") and the Lower Mississippi RIVERKEEPER® intend to sue Methanex USA LLC ("Methanex") for polluting the Mississippi River on numerous occasions in the short time its Geismar Methanol Plant has been operational, in violation of the terms of the applicable discharge permit issued under the Louisiana Pollution Discharge Elimination System ("LPDES Permit").¹ These violations relate to the Geismar Methanol Plant located at 4171 Louisiana Highway 73, Geismar, LA 70734. According to Methanex's permit application materials from 2013, the Geismar Methanol Plant is designed to produce "3,000 metric tons per day of refined

¹ As relevant to the violations in this notice, Permit No. LA0126756 took effect May 21, 2014, and remains effective as modified December 28, 2015.

methanol from natural gas feedstock.” The violations documented in this notice constitute continuing violations of sections 301 and 402 of the federal Clean Water Act, 33 U.S.C. §§ 1311, 1342.

Pursuant to Methanex’s permit, the company may not discharge pollutant-containing wastewater into the Mississippi River unless it complies with the permit’s terms. In particular, in order to protect public health and the environment, the LPDES Permit contains maximum limits for various constituents, as set by the Louisiana Department of Environmental Quality (“LDEQ”). Moreover, in order to guarantee proper compliance, the permit requires Methanex to employ best management practices, which necessarily include securing its equipment and operating and maintaining the facility in such a way to avoid spills.

By repeatedly discharging wastewater containing levels of pollutants higher than those allowed by the LPDES Permit, and enabling a diesel spill by failing to properly secure and monitor its equipment, Methanex has exposed the public and the environment to an unnecessary and unacceptable risk of harm. Methanex is in violation of the Clean Water Act and must take immediate action to come into compliance.

I. Identity of Complainants

A. Louisiana Environmental Action Network, Inc.

LEAN is a Baton Rouge-based umbrella organization established to promote and protect the health of Louisiana’s natural environment for the use and enjoyment of the people of Louisiana. In executing its purpose, LEAN ensures that the laws and regulations of the State, intended to preserve and enhance its natural resources and environmental quality, are diligently followed in letter and in spirit. LEAN has a particular interest in the preservation and restoration of water quality in the rivers and streams of Louisiana, and in protecting its members from exposure to public health risks. In addition, LEAN’s interest in water quality flows directly from the personal interests of its members who own property, live, and/or work adjacent to the affected portion of the Mississippi River, and who use those waters that receive the contaminated discharges from Methanex’s Geismar Methanol Plant for recreation, boating, swimming, and/or aesthetic enjoyment. Water pollution and threats to water quality from the Geismar facility and Methanex’s repeated violation of its permit directly harm these members of LEAN. LEAN can be reached as follows:

Louisiana Environmental Action Network, Inc.
P.O. Box 66323
Baton Rouge, LA 70896
Phone: (225) 928-1315

B. Lower Mississippi RIVERKEEPER®

The Lower Mississippi RIVERKEEPER® (“LMR”) works with local communities to address the polluted state of the Mississippi River, which travels through 31 states and drains

2,350 square miles, making it one of the most endangered rivers in the United States. LMR energizes current activists to participate in environmental decisions, and educates the public and government leaders about environmental challenges and economic opportunities regarding the Mississippi River and how reduced water pollution benefits everyone. As part of its work, LMR monitors water quality, investigates reported pollution-related incidents, and seeks to compel polluters to comply with the Clean Water Act to reduce pollution in the River for the benefit of surrounding communities' health and the health of the environment. LMR is a member of LEAN.

Additionally, LMR is part of the international Waterkeeper Alliance, which provides a way for communities to stand up for their right to clean water and for the wise and equitable use of water resources, both locally and globally. The vision of the Waterkeeper movement is for fishable, swimmable and drinkable waterways worldwide, which the organization seeks to achieve through grassroots advocacy.

Members of LMR own property, live, and/or work adjacent to the affected portion of the Mississippi River, and use those waters that receive the contaminated discharges from Methanex's Geismar Methanol Plant for recreation, boating, swimming, and/or aesthetic enjoyment. Water pollution and threats to water quality from the Geismar facility and Methanex's repeated violation of its permit directly harm these members of LMR. LMR can be reached as follows:

Lower Mississippi RIVERKEEPER®
c/o The Louisiana Environmental Action Network
P.O. Box 66323
Baton Rouge, LA 70896
Phone: 225-928-1315

II. Effect of the Violations on Public Resources

The Mississippi River

The LPDES Permit allows Methanex to discharge limited quantities of pollutants into the Mississippi River, through Outfall 001. As LMR recognizes:

The Mississippi River Basin is home to 1.5 million people, and over 350 industrial and municipal facilities are located adjacent to the River within the state of Louisiana. Approximately 175 of these facilities discharge wastewater into the river under the authority of state/federal permits, and of these approximately 120 facilities are located between Baton Rouge and New Orleans. Noncompliance with wastewater discharge permits by a large number of facilities along the River is widespread . . . In addition to the industrial pollution[,] when the Mississippi River flows into Louisiana it already contains a variety of chemicals including the herbicide Atrazine, which originates in stormwater runoff from agricultural fields in mid-western states and presents a potential health hazard. This places a particular

burden on the Communities from Ascension Parish to the mouth of the Mississippi River that use surface water as their only source of drinking water.²

Thus, any permit violations by Methanex cannot be viewed in isolation but also have a deleterious cumulative effect on the health of the Mississippi River and neighboring communities. Each violation compounds the preexisting threat to the residents and environment of the lower Mississippi River, which is impaired due to the activities of many industrial and agricultural users.

III. Legal Overview

Section 301 of the Clean Water Act prohibits the “discharge of any pollutant by any person” without proper authorization, such as in compliance with the terms of a permit issued under Section 402. 33 U.S.C. § 1311(a). Section 402 establishes the National Pollutant Discharge Elimination System, a permitting program regulating the discharge of pollutants by industrial facilities, and provides for the issuance of such permits by individual States. 33 U.S.C. § 1342(h). In Louisiana, the issuance of such permits (known as LPDES permits) has been delegated to the Louisiana Department of Environmental Quality. Part III.A.2 of the LPDES Permit mandates compliance “with all conditions,” making “[a]ny permit noncompliance . . . grounds for enforcement action” and a violation of both the Clean Water Act and the Louisiana Environmental Quality Act.

Congress provided for enforcement of the discharge limitations in the Clean Water Act through citizen suits like the present one. Title 33 U.S.C. § 1365 permits a citizen to bring a claim for a violation of any effluent standard or limitation under the Act. Violation of an LPDES permit is a violation of an effluent standard or limitation and is actionable under the citizen suit provision of the Clean Water Act. Please note that when reporting is monthly, each month showing a violation of a parameter constitutes a separate violation of that parameter for each day of the month, or until the next valid test result demonstrating compliance is submitted. The same applies for the quarterly and semi-annual reporting that the facility undertakes.

IV. Specific Violations

In the short history of operations associated with the Geismar Methanol Plant, Methanex (A) has repeatedly exceeded effluent limits in its LPDES Permit, and (B) failed on two occasions to timely and properly disclose all violations. The violations documented in this notice are based on a review of discharge monitoring reports, permits, and other documents maintained in LDEQ’s Electronic Document Management System (“EDMS”) and associated with Agency Interest Number 181192.

A. Methanex has repeatedly violated numerical effluent limitations at Outfall 001-A and Internal Outfall 002.

² <http://lmrk.org/the-mississippi-river/>

The LPDES Permit requires monitoring of certain parameters associated with Outfall 001-A and Internal Outfall 002. The permit describes Outfall 001 (Phase I) as “the continuous discharge of process wastewater, process area stormwater runoff, boiler blowdown, cooling tower blowdown, miscellaneous wastewater, and previously treated sanitary wastewater (Internal Outfall 002).” Outfall 001 (Phase II) includes all of the components associated with Phase I, along with “miscellaneous non-process wastewater,” “operational and maintenance wastewaters including hydrostatic test wastewater.” Phase II began in October 2015, with the startup of the Geismar 2 methanol unit. Internal Outfall 002 consists of “the continuous discharge of treated sanitary wastewater.” All of these waste streams eventually discharge into subsegment 070301 of the Mississippi River.

The permit contains numerical limitations for each monitored constituent associated with Outfall 001 and Internal Outfall 002, including pH, chloroform, and fecal coliform. Compliance with numerical standards is essential to avoiding actual harm to the environment of the Mississippi River and surrounding communities. In particular, “[e]xtremes in pH can make a river inhospitable to life. Low pH is especially harmful to immature fish and insects. Acidic water also speeds the leaching of heavy metals harmful to fish.”³ Chloroform is a probable human carcinogen and can also cause serious problems related to the central nervous system and live.⁴ It is toxic to aquatic life. Further, high levels of fecal coliform indicate bacterial contamination associated with human waste. Exposure can cause serious illness.

The following chart documents exceedances of effluent standards by Methanex at Outfalls 001-A and 002:

Monitoring Period	Constituent	Standard	Result	Outfall
02/01/2017-02/28/2017	pH	6, minimum	3.926	001-A
05/01/2016-05/31/2016	pH	6, minimum	5.08	001-A
05/01/2016-05/31/2016	pH	9, maximum	9.01	001-A
01/01/2016-01/31/2016	pH	6, minimum	4.2	001-A
11/01/2015-11/30/2015	pH	6, minimum	5.3	001-A
07/01/2015-12/31/2015	Chloroform	0.12, monthly average	0.26	001-S
07/01/2015-12/31/2015	Chloroform	0.27, daily maximum	0.46	001-S
01/01/2017-03/31/2017	Fecal Coliform	400, daily maximum	600	002
07/01/2015-09/30/2015	Fecal Coliform	200, monthly average geomean	3,900	002
07/01/2015-09/30/2015	Fecal Coliform	400, daily maximum	3,900	002
01/01/2015-03/31/2015	Fecal Coliform	200, monthly average geomean	>202	002
01/01/2015-03/31/2015	Fecal Coliform	400, daily maximum	>8,200	002
973	Total Days in Violation			

³ <https://www.grc.nasa.gov/www/k-12/fenlewis/Waterquality.html>

⁴ <https://www.epa.gov/sites/production/files/2016-09/documents/chloroform.pdf>

These exceedances detailed above are evidence of the following permit violations:

1. Violation of the duty to comply in Part III.A.2 of the LPDES Permit;
 2. Failure to “take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment,” and to “take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge” (LPDES Permit, Part III.B.2, Duty to Mitigate);
 3. Failure to “at all times properly operate and maintain all facilities and systems of treatment and control” (LPDES Permit, Part III.B.3.a, Proper Operation and Maintenance); and
 4. Failure to ensure “adequate operating staff which is duly qualified” with regard to operation of treatment and control devices (LPDES Permit, Part III.B.3.b, Proper Operation and Maintenance).
- B. Methanex twice reported to LDEQ that it was in compliance with all effluent limitations when it was actually out of compliance with an effluent standard.**

The chart above documents violations of the minimum pH levels at Outfall 001-A for the months of January 2016 and November 2015. A typed discharge monitoring report (“DMR”) for January failed to note the low pH as an exceedance, and a cover letter submitted with that report on February 15, 2016 represented to LDEQ that “no permit limits were exceeded.” A different DMR submitted electronically for the same monitoring period contains a proper notation of the pH exceedance, but it does not appear that Methanex ever corrected its misrepresentation to LDEQ.

Next, the DMR for November 2015 failed to note the low pH as an exceedance, and a cover letter submitted with that report on December 15, 2015 represented to LDEQ that “no permit limits were exceeded.” It does not appear that Methanex ever corrects this misrepresentation to LDEQ.

Accurate reporting is important to paint an accurate picture of Methanex’s compliance or lack of compliance with all permit conditions, and to place regulators and the public on notice of potential threats to human health and the environment.

The misrepresentations identified above amount to the following violations:

1. Violation of the duty to comply in Part III.A.2 of the LPDES Permit;

2. Violation of the requirement in Part III.D.4 of the LPDES Permit, that “[m]onitoring results shall be reported at the intervals and in the form specified,”
3. Violation of the requirement that monitoring reports must be submitted “under penalty of law that . . . the information submitted is . . . true, accurate, and complete” (LPDES Permit, Part III.D.10.d); and
4. Failure to ensure “adequate operating staff which is duly qualified” with regard to monitoring and reporting requirements (LPDES Permit, Part III.B.3.b, Proper Operation and Maintenance).

C. Methanex failed to take steps necessary to prevent—and is otherwise responsible for—the discharge of an unpermitted pollutant.

Louisiana State Police notified Methanex of a diesel spill associated with the Geismar Methanol Plant on November 17, 2014. The diesel contamination extended offsite to “two areas of a ditch parallel to Highway 73 outside the fence line of the facility” and required corrective action. An investigation revealed the cause of the spill was a bulldozer with an open sediment drain, which was “parked next to an area where rainwater had accumulated the night before.” While Methanex speculated to LDEQ that diesel theft—rather than operator error—had occurred, Methanex is strictly liable for Clean Water Act violations related to its facility. In particular, this incident is evidence of the following violations:

1. Violation of the duty to comply in Part III.A.2 of the LPDES Permit;
2. Failure to “take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment” (LPDES Permit, Part III.B.2, Duty to Mitigate);
3. Failure to “at all times properly operate and maintain all facilities and systems of treatment and control” (LPDES Permit, Part III.B.3.a, Proper Operation and Maintenance);
4. Failure to ensure “adequate operating staff which is duly qualified” with regard to operation of treatment and control devices (LPDES Permit, Part III.B.3.b, Proper Operation and Maintenance);
5. Discharging an unpermitted pollutant in violation of Part II.A of the LPDES Permit, which “does not in any way authorize the permittee to discharge a pollutant not listed or quantified in the application or limited or monitored for in the permit”;
6. Noncompliance with the terms of Methanex’s Storm Water Pollution Prevention Plan, which is “an enforceable Part of the permit” (LPDES Permit, Part II.L.3);

7. Failure to maintain “[a]ll equipment, parts, dumpsters, trash bins, petroleum products, chemical solvents, detergents, or other materials exposed to stormwater . . . in a manner which prevents contamination of stormwater by pollutants” (LPDES Permit, Part II.L.5.c); and
8. Violation of the terms of the Large Construction Storm Water General Permit that was in effect at the time of the incident (Permit No. LAR100000, Authorization No. LAR10H936 and/or LAR10J706)—including but not limited to Part VI.N, concerning proper operation and maintenance of the facility and the provision of an adequate operating staff “duly qualified to carry out operation, maintenance and other functions necessary to ensure compliance with the conditions of the permit.”

V. Remedies

In accordance with Section 505(b) of the Act, 33 U.S.C. § 1365(b), LEAN and LMR hereby give formal notice of their intent to file suit against Methanex in federal court, after the expiration of 60 days from the date of this notice. Copies of this notice are being provided to the State of Louisiana, through its Department of Environmental Quality, the U.S. Department of Justice, and the United States Environmental Protection Agency.

Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the regulation allowing for the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Act subjects Methanex to a penalty of up to \$37,500 per day per violation for all violations occurring up to and including November 2, 2015, and up to \$52,414 for violations occurring after November 2, 2015. This means that the maximum potential penalty for the 973 days of numerical standard and reporting violations alone exceeds \$44,000,000. In addition to civil penalties, LEAN and LMR will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) of the Act, 33 U.S.C. § 1365(a), and requiring Methanex to remediate any damage to the Mississippi River. Finally, LEAN and LMR will seek to recover costs and fees associated with this action, including attorneys’ fees, as allowed for prevailing parties under Section 505(d) of the Act, 33 U.S.C. § 1365(d).

VI. Conclusion

LEAN and LMR hope Methanex will take prompt action to remedy the violations identified in this notice letter, and will meet with Methanex to further discuss methods of compliance and answer any questions Methanex may have. Please direct all correspondence to the undersigned counsel, via the address and telephone number below.

Sincerely,



Robert Wiygul
1011 Iberville Dr.
Ocean Springs, MS 39564
Phone: (228) 872-1125

cc: **Certified Mail & Return Receipt Requested**

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Certified Mail & Return Receipt Requested

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